

RCE and Response under 37 CFR §1.114, responsive to Notice of Panel Decision from Pre-Appeal Review

REMARKS

Applicant notes that claim amendments were submitted with the January 29, 2009 “Amendment under 37 C.F.R. 1.116,” and considered by the Examiner, as indicated on the Advisory Action mailed by the USPTO on March 10, 2009. Although the Examiner did not explicitly state on the Advisory Action that the claims were entered (items 3 and 7 were not marked), the Examiner stated on the “continuation sheet” that “[w]ith respect to applicant’s argument on the rejection under 35 U.S.C. 101, the examiner accepts applicant arguments and withdraw the rejection. Upon further consideration, the limitation ‘network access device’ provide [sic] enough tie to another statutory subject matter.” Accordingly, Applicant referred to the amended claims in the Pre-Appeal Brief Request for Review Statement Accompanying Notice of Appeal. If the amendments submitted with the January 29, 2009 “Amendment under 37 C.F.R. 1.116” were *not* entered, and in view of the accompanying Request for Continued Examination, Applicant requests entry of the claim amendments submitted January 29, 2009 in addition to entry of this Response and Amendment under 37 C.F.R. 1.114. Accordingly, Applicant’s claim amendments herein reference the claim listing provided in the January 29, 2009 filing.

Similarly, Applicant incorporates the contents of the January 29, 2009 Reply under 37 C.F.R. 1.116 and April 1, 2009 Pre-Appeal Brief Request for Review Statement Accompanying Notice of Appeal, in full, where appropriate.

In the outstanding Office Action, the Examiner rejected claims 11-13 and 18-21 under 35 U.S.C. §101, asserting that the claimed invention is directed to non-statutory subject matter; rejected claims 1, 8, 11, 22, 25 and 26 under 35 U.S.C. §102(b) as being unpatentable over U.S. Patent No. 6,557,009 to Singer et al. (hereinafter referred to as “Singer et al.”); rejected claims 2-7, 12, 13, 19, 24 and 27 under 35 U.S.C. §103(a) as being unpatentable over Singer et al. in view of U.S. Patent Application Publication No. 2003/0167187 to Bua (hereinafter referred to as “Bua”); rejected claims 9, 10 and 18 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,590,057 to Fletcher et al. (hereinafter referred to as “Fletcher et al.”); and rejected claim 20 under 35 U.S.C. §103(a) as being unpatentable over Singer et al. ‘009 patent and U.S. Patent No. 6,546,230 to Allison (hereinafter referred to as “Allison”).

Claims 1 – 13 and 18 -27 are pending in this application. Claims 14 - 17 were previously cancelled without prejudice or disclaimer to the contents therein. Claims 1, 11 and 22 have been amended, for the sole reason of advancing prosecution. Applicant, by amending any claims herein, makes no admission as to the validity of any rejection made by the Examiner against any of these claims. Applicant reserves the right to reassert the original claim scope of any claim amended or canceled herein, in a continuing application.

Claims 2 - 10 and 25, claims 12, 13, 18- 21, and claims 23, 24 and 27, depend, either directly or indirectly, from claims 1, 11 and 22, respectively. Claims 1, 11 and 22 have been amended to overcome the “functional language” objection voiced by the Examiner in the March 10, 2009 Advisory Action and to more positively recite the claim features in accordance with the discussions in the Interview conducted June 9, 2009. Support for the specification and claims as amended, appears throughout the specification and claims as originally filed, for example on page 13, lines 3-9, and page 19, line 24 to page 20 line 3 of the original specification. It is respectfully submitted that the amendments do not introduce any new matter within the meaning of 35 U.S.C. §132.

Interview Summary

Applicant thanks the Examiner for the courtesies extended to Applicant’s Representatives during the telephone discussion with the Examiner on May 19, 2009 and in the Interview with the Examiner and his Primary Examiner on June 9, 2009. Discussion items included an overview of Applicant’s claimed subject matter, the claim features “evaluation questions,” “assessment questions,” “information usable [used] to construct profiles,” “assessment courses” etc., and discussion of claim terminology to distinguish claimed subject matter from prior art.

Interview discussion focused on the claims; Applicant thanks the Examiner(s) for the opportunity to working together toward alternative claim language to further clarify and define the claimed subject matter. Applicant’s Representatives presented to the Examiner(s) proposed amendments to the independent claims that clarified the recitation of “profile,” “evaluation question,” “assessment question” and “information usable” within the claims. The Examiners

RCE and Response under 37 CFR §1.114, responsive to Notice of Panel Decision from Pre-Appeal Review

favorably regarded the proposed claim amendments and made some suggestions to refine the claim language. Applicant thanks the Examiner(s) for providing a verbal indication that the claimed subject matter, as amended, overcame the “functional language” objection voiced by the Examiner in the Advisory Action mailed March 10, 2009 and overcame the cited art references of record. Applicant further thanks the Examiner(s) for the Examiner’s Interview Summary in which the Examiner indicated that “[b]oth proposed claim amendment limitations seem to further differentiate the claimed invention from the current prior art.” Accordingly, and in view of the Interview and the Examiners’ helpful suggestions, Applicant submits revised claims herewith.

Claim Rejections under 35 U.S.C. §101

The Examiner rejected claims 11-13 and 18-21 under 35 U.S.C. §101 asserting that the claimed invention is directed to non-statutory subject matter. In particular, the Examiner asserted that the claimed invention [claimed method] does not have a sufficient tie to any machine, article of manufacture or a composition of matter.

Response

As discussed above, and indicated by the Examiner in the Advisory Action mailed March 10, 2009, “[w]ith respect to applicant’s argument on the rejection under 35 U.S.C. 101, the examiner accepts applicant arguments and withdraw the rejection. Upon further consideration, the limitation ‘network access device’ provide [sic] enough tie to another statutory subject matter.”

Applicant thanks the Examiner for reconsidering and withdrawing the rejections under 35 U.S.C. 101.

Claim Rejections under 35 U.S.C. §102(b)

The Examiner rejected claims 1, 8, 11, 22, 25 and 26 under 35 U.S.C. §102(b) as being unpatentable over Singer et al.

Response

Claims 1, 8, 11, 22, 25, and 26 have been amended, as discussed above, or depend upon amended claims and, as amended, the rejections thereto are respectfully traversed. Applicant further traverses the rejections since all of the features of the presently claimed subject matter are not disclosed by the cited references.

For a reference to anticipate an invention, all of the elements of that invention must be present in the reference. The test for anticipation under section 102 is whether each and every element as set forth in the claim is found, either expressly or inherently, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP §2131. The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); MPEP §2131.

Overview

Applicant's independent claim 1 sets forth "[a] system for allowing a user to perform an assessment for compliance certification comprising:

- a database storing a plurality of evaluation questions and a plurality of assessment questions,

- wherein the evaluation questions ask for information used to construct profiles of at least one organization, each profile comprising substantive work-function related information of the at least one organization, at least one of the substantive work-function related information selected from the group consisting of: tests performed, specialties, instruments, personnel, and proficiency testing of the at least one organization,*

- wherein the assessment questions ask for information used to determine if said at least one organization meets requirements for at least one compliance certification, and*

- wherein subsets of said plurality of evaluation and assessment questions are combined to form a plurality of assessment courses; and*

RCE and Response under 37 CFR §1.114, responsive to Notice of Panel Decision from Pre-Appeal Review

a server, connected to said database via a communications network, having a processor configured to cause a graphical user interface to be displayed to a network access device connected to said server via said communications network;

wherein said processor is further configured to present to an assessed user, as individual personnel of an organization seeking said at least one compliance certification, via said graphical user interface, a subset of evaluation questions comprised by at least one of said plurality of assessment courses,

wherein said processor is further configured to receive responses from the assessed user to said subset of evaluation questions,

wherein said processor is further configured to construct at least one profile of the organization seeking said at least one compliance certification based on said responses to said subset of evaluation questions, said responses from the assessed user to said subset of evaluation questions controlling the display of the assessment questions and other question groups contained within the group that it controls, wherein only assessment questions relative to evaluation questions answered affirmatively, or as being applicable, by the assessed user are presented,

wherein said processor is further configured to present to the assessed user, via said graphical user interface, a subset of assessment questions comprised by said at least one of said plurality of assessment courses and corresponding to said at least one profile of the organization seeking said at least one compliance certification, and

wherein said processor is further configured to receive responses from the assessed user to the subset of assessment questions comprising said at least one of said plurality of assessment courses”

(emphases added).

Amended independent claim 11 has been discussed above, and recites “[a] computer-implemented method for allowing users to remotely perform assessments for compliance certification via a graphical user interface on a network access device, comprising the steps of:

RCE and Response under 37 CFR §1.114, responsive to Notice of Panel Decision from Pre-Appeal Review

storing a plurality of evaluation questions and a plurality of assessment questions,
*wherein the evaluation questions ask for information used to construct profiles of
at least one organization, each profile comprising substantive work-function related
information of the at least one organization, at least one of the substantive work-function
related information selected from the group consisting of: tests performed, specialties,
instruments, personnel, and proficiency testing of the at least one organization,*

*wherein the assessment questions ask for information used to determine if said at
least one organization meets requirements for at least one compliance certification, and*

*wherein subsets of said plurality of evaluation and assessment questions are
combined to form a plurality of assessment courses;*

causing a graphical user interface to be displayed on a network access device,
over a communications network, to an assessed user, as individual personnel of an
organization seeking said at least one compliance certification;

receiving a selection from said assessed user, via said graphical user interface on
a network access device, wherein said selection is indicative of one of said plurality of
assessment courses;

presenting to said assessed user, via said graphical user interface, a subset of
evaluation questions comprised by at least one of said plurality of assessment courses;

receiving from said assessed user, via said graphical user interface, responses to
said subset of evaluation questions;

*constructing at least one profile of the organization seeking said at least one
compliance certification based on said responses to said subset of evaluation questions,
said responses from the assessed user to said subset of evaluation questions controlling
the display of the assessment questions and other question groups contained within the
group that it controls, wherein only assessment questions relative to evaluation questions
answered affirmatively, or as being applicable, by the assessed user are presented;*

presenting to said assessed user, via said graphical user interface, a subset of
assessment questions comprised by said at least one of said plurality of assessment

RCE and Response under 37 CFR §1.114, responsive to Notice of Panel Decision from Pre-Appeal Review

courses and corresponding to said at least one profile of the organization seeking said at least one compliance certification;

receiving from said assessed user, via said graphical user interface, responses to the subset of assessment questions comprised by said at least one of said plurality of assessment courses”

(emphases added).

Applicant’s independent claim 22 recites “[a] computer program product comprising a computer usable medium having control logic stored therein for causing a computer to perform assessments for compliance certification, said control logic comprising:

first computer readable program code means for causing the computer to store a plurality of evaluation questions and a plurality of assessment questions,

wherein the evaluation questions ask for information used to construct profiles of at least one organization, each profile comprising substantive work-function related information of the at least one organization, at least one of the substantive work-function related information selected from the group consisting of: tests performed, specialties, instruments, personnel, and proficiency testing of the at least one organization,

wherein the assessment questions ask for information used to determine if said at least one organization meet requirements for at least one compliance certification, and

wherein subsets of said plurality of evaluation and assessment questions are combined to form a plurality of assessment courses;

second computer readable program code means for causing the computer to display a graphical user interface, over a communications network, to an assessed user as individual personnel of an organization seeking said at least one compliance certification;

third computer readable program code means for causing the computer to receive a selection from said assessed user, via said graphical user interface, wherein said selection is indicative of one of said plurality of assessment courses;

fourth computer readable program code means for causing the computer to present to said assessed user, via said graphical user interface, a subset of evaluation questions comprised by at least one of said plurality of assessment courses;

fifth computer readable program code means for causing the computer to receive from said assessed user, via said graphical user interface, responses to said subset of evaluation questions;

sixth computer readable program code means for causing the computer to construct at least one profile of the organization seeking said at least one compliance certification based on said responses to said subset of evaluation questions, wherein said sixth computer readable program code means causes said responses from the assessed user to said subset of evaluation questions to control the display of the assessment questions and other question groups contained within the group that it controls, wherein only assessment questions relative to evaluation questions answered affirmatively, or as being applicable, by the assessed user are presented;

seventh computer readable program code means for causing the computer to present to said assessed user, via said graphical user interface, a subset of assessment questions comprised by said at least one of said plurality of assessment courses and corresponding to said at least one profile of the organization seeking said at least one compliance certification;

eighth computer readable program code means for causing the computer to receive from said assessed user, via said graphical user interface, responses to the subset of assessment questions comprised by said at least one of said plurality of assessment courses”

(emphases added).

Singer et al. discloses “[A] system ... that allows remote, regulated entity users web based access to authorization data, such as permit data in an environmental regulatory permitting or management system. The user can enter, edit and submit permit and compliance data in the

environmental permitting system controlled by a regulating agency in real-time via a web browser over the Internet. The system can also validate submitted information in real-time and allows the user to correct the data. Electronic certification with a unique signature is also performed. Fee payment can be made electronically in real-time through the permitting system with an electronic payments system with a corresponding credit being made to the relevant department general ledger account.” *See Singer et al. Abstract.*

Rejection of claims 1, 8, 11, 22, 25 and 26

The Examiner has asserted that “the reference database storing a plurality of evaluation question and plurality of assessment question” introduced in Claims 1, 11 and 22 of the presently claimed subject matter is disclosed by Singer et al. (col. 5, lines 55-68, Applicant citation of line 54 for clarity included in braces) as an “{application server 16...} communicate[s] between the web server 14 and a joint usage database 18 located on a database server 19. The application server 16 takes requests from users, accesses information needed by the users within the database 18 and sends that data to the web server 14 to be formatted into a web page. This web page is sent to the PC 12.”

However, Applicant respectfully submits that Singer et al. fails to disclose or enable a “database storing a plurality of evaluation question and plurality of assessment question” as presently recited in the claims. Indeed, the cited passage of Singer et al. above fails to discuss any sort of evaluation or assessment question stored, much less a database containing a plurality of such questions.

The Examiner has further asserted that “wherein the evaluation questions ask for information usable to construct profiles of at least one organization” is disclosed by Singer et al. (col. 9, lines 20-30, Applicant citation of line 19 for clarity included in braces) as “{the user accesses 302 (see FIG. 8) the} spread-sheet submittal web pages (see FIGS. 6A-6C). In this page 264 the user enters 304 contact information, typically an address information including an e-mail address as depicted in FIGS. 6Ai and 6Aii, enters 306 facility and equipment identification information in page 266 as depicted in FIGS. 6Bi and 6Bii and enters 308 reporting period data in

page 268 as depicted in FIG. 5C. The user then submits 310 the completed request to the application server 16 through the web server 14.”

Again, Singer et al. fails to discuss explicit evaluation questions. Instead, the submittal web pages discussed in the cited passage merely consist of form fields for entering standard *contact* or *identification information* (as shown in Figs. 6Ai and 6Aii), similar to those that the applicant would ordinarily complete in paper form but instead, in Singer et al., completes in web form. Thus the ‘profile’ created in Singer et al. is superficial at best and not derived from answers to evaluation questions, of which there are none. In contrast, the presently claimed subject matter refers to the development of profile(s) regarding the organization or laboratory being assessed for compliance. Page 13, lines 3-9 of the original specification clarify that “[I]n step 208, process 200 constructs a Laboratory Profile by asking a series of evaluation questions. Examples of information collected during step 208 are tests performed, specialties, instruments, personnel, and proficiency testing. This information is then used in the self-assessment course to determine which (appropriate) questions would be shown to the user. For example, if the specialty of microbiology is not conducted in the laboratory, the user would not be presented (i.e., would not have to answer) any microbiology-related self-assessment questions.” Thus, the specification reinforces the interactive relationship recited in the claims wherein evaluation questions are asked and the answers given by the user are used to construct a profile(s) for the organization or laboratory being assessed.

Applicant’s claims previously recited that “assessment questions ask for information usable to determine if at least one organization meet the requirement for at least one compliance certification.” In the Advisory Action, the Examiner indicated “[f]irstly, the disputed limitation can be interpreted as an intended use limitation. Secondly, the Singer reference provides an explicit teaching where the information gathered previously are used to determine if at least one organization meet the requirement for at least one compliance certification.” Applicant respectfully requested that the Examiner’s interpretation of the assessment questions, and especially the assessment questions necessary to determine meeting the requirements for compliance certification, be reconsidered in accordance with those recited in the claims. Specifically, the claimed assessment questions are asked to gauge whether an organization has met the requirements for compliance

certification recited in the claims are designed based on the compliance certification the organization is trying to receive. Applicants respectfully submitted that the Examiner's refusal to give patentable weight to the *intended use* recited in the claims contradicted the instructions of MPEP §2114 that "features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure...." Thus, Applicant argued that it is not enough that, as suggested by the Examiner's citation of Singer et al. col. 6, lines 40-58, other systems check the identification of users for security purposes. Rather, the Examiner must demonstrate that systems having similar structure and therefore *having assessment questions* based on the intended use thereof (i.e., to check the requirements for the compliance certification) as recited in the claims is known or obvious, and not just that other systems are capable of providing some 'assessment questions' (Applicant further submits that checking identification is not equivalent to asking an assessment question) regarding some aspect of the organization.

In view of the recent discussions with the Examiner(s) and in the interest of expediently advancing prosecution, Applicant has amended the claims to remove the intended use limitation and functional language objected to by the Examiner, and to explicitly recite distinguishing features of the claimed "profile," "evaluation questions," "assessment questions," and "assessment courses," and the interactions therebetween, as discussed in the Interview. For example, the claim term "usable" has been replaced with "used" and the claim term "configurable" has been replaced with "configured to." Applicant notes that such amendments were favorably received by the Examiner(s) in the Interview, as discussed above.

The Examiner has asserted that "wherein the assessment questions ask for information usable to determine if said at least one organization meet requirements for at least one compliance certification" is disclosed by Singer et al. (col. 8, lines 1-15) as "The system then queries 132 as to whether the individual is the responsible official. If so a second responsible official certification screen 212 (see FIG. 3Eii) for the official is presented showing all of the permits that are in the officials's queue. A responsible official may also access the responsible official certification screen at any point in the process through the web portal's menu. The official can select 136 (see FIG. 2D)

to review 138 one or more of the permits. If the official has reviewed the permit and desires to certify it, the official enters his PIN electronically signing 140 the permit and submits the certification. The system then validates 142, at the application server level against the central data repository, the signature using the database 18 to compare the entered PIN with valid PINs stored in the database 18 and initiates 144 a Java script....”

The Examiner has further asserted that “wherein subsets of said plurality of evaluation and assessment questions are combinable to form a plurality of assessment courses” is disclosed by Singer et al. (col. 10, lines 33-40) as “The present invention has been described with respect to environmental-streamlining the transfer of data and permit documents between regulators and their regulated clients as well as making payments therefor. The tool of the present invention could be applied to the creation, electronic certification, printing and payment of any kind of permit document (i.e. permit, application, report, certificate and/or standardized spread-sheet) for electronic submission....”

The Examiner has further asserted that “wherein said processor is further configured to present to an assessed user, as individual personnel of an organization seeking said at least one compliance certification, via said graphical user interface, a subset of evaluation questions comprised by at least one of said plurality of assessment courses” is disclosed by Singer et al. (col. 9, lines 20-30) as already discussed above.

Applicant respectfully submits that the cited passages of Singer et al. not only do not disclose or enable “assessment questions” distinct from evaluation questions, but also do not discuss “requirements for at least one compliance certification” and do not discuss “assessment courses” as presently recited in the claims. In the presently claimed subject matter, the evaluation questions are used to construct profile(s) for the organization(s) applying for certification and to determine the (types and number, etc. of) assessment courses that will be displayed for the user from the organization to complete. The assessment courses contain assessment questions that must be answered by the user. In contrast, the cited passages of Singer et al. appear only to allow for the governmental responsible certification official to access a screen 212 to review one or more of the (application(s) for) permits. While Applicant recognizes that the passage in col. 10 of Singer et al.

RCE and Response under 37 CFR §1.114, responsive to Notice of Panel Decision from Pre-Appeal Review

provides for application of the “present invention” “to the creation, electronic certification... of any kind of permit document... for electronic submission,” such a statement does not change the lack of disclosure or enablement in Singer et al. of many features of the Applicant’s claimed subject matter. None of the evaluation questions, assessment questions, assessment courses, or the requirements for certification recited in the present claims are disclosed in the above passages, instead only that *if* the official has reviewed the user’s (web forms and data spreadsheet) application *and* desires to certify the permit, electronic means are available for doing so.

The Examiner has asserted that “the reference database storing a plurality of evaluation question and plurality of assessment question” recited in the claims is disclosed by Singer as an “application server 16... [which] takes requests from users, accesses information needed by the users within the database 18 and sends that data to the web server 14 to be formatted into a web page... sent to the PC 12.” Applicant respectfully submitted, without response in the Advisory Action (contrary to MPEP 707.07(f)), that Singer fails to disclose or enable a “database storing a plurality of evaluation question and plurality of assessment question” as recited in the claims.

The Examiner has further asserted that “wherein the evaluation questions ask for information usable to construct profiles of at least one organization” recited in the claims, is disclosed by Singer as “the user accesses 302 the spread-sheet submittal web pages... page 264 the user enters 304 contact information, typically an address information including an e-mail address, enters 306 facility and equipment identification information in page 266 and enters 308 reporting period data in page 268... submits 310 the completed request to the application server 16 through the web server 14.” However, again, Singer fails to discuss evaluation questions. Instead, Singer’s submittal web pages merely consist of form fields for entering standard *contact* or *identification information*, similar to those that the applicant would ordinarily complete in paper form but instead, in Singer, completes in web form. Thus the ‘profile’ created in Singer is superficial at best and not derived from answers to evaluation questions, of which there are none. In contrast, the presently claimed subject matter refers to the development of profile(s) regarding the organization or laboratory being assessed for compliance. This is clearly supported in the original specification, especially at page 13 and explicitly stated in the claims. Thus, the specification reinforces the

interactive relationship recited in the claims wherein evaluation questions are asked and the answers given by the user are used to construct a profile(s) for the organization or laboratory being assessed.

In further contrast, the Examiner has asserted that “wherein said processor is further configured to construct at least one profile of the organization seeking said at least one compliance certification based on said responses to said subset of evaluation questions” is disclosed by Singer (Fig. 3Ci).

As discussed above, Applicant respectfully submits that Singer fails to disclose or enable construction of “at least one profile of the organization... based on said responses to... evaluation questions” as substantially recited in the claims. Fig. 3Ci of Singer reinforces the points discussed above, as the figure depicts a screen shot of “Facility Profile” further explained by such text as “Your facility location address and mailing address are displayed” and “You may enter up to three contacts as your Facility Contacts.” Applicant notes that no questions are present on the screen, and the profile that is suggested by this page is superficial, not directed to responses of evaluation questions regarding compliance criterion and could not be used to further determine the assessment questions to be asked for compliance certification, in contrast to the presently claimed subject matter. In the Advisory Action, the Examiner stated that “the Singer reference provides a teaching of a list question that specifies the type of the facilities (...addresses, “facility and equipment information)” and argued that “claim language...do not specify the depth or the type of information in the evaluation survey.” Applicant respectfully submits that particularly in view of the amendments submitted herein, the claim language does support the depth or the type of information in the evaluation survey, and hence Applicant’s claims clearly recite the questions, requirements and courses necessary to facilitate judgment of compliance certification in the claimed system (in marked contrast to Singer et al.)

Finally, lines 28-38 of Singer state that “[B]ecause the preparation of the *spread-sheet* can take a short period of time, the spread-sheet can be and typically is prepared at the server level and is “*off-line*” from the user’s interaction taking place with the permitting system web site on the client machine. As a result, when the user submits the request, the user need not wait for the spread-sheet to be created and can do other things... it is also possible for the user to wait and refresh the

application screens in real-time...” Thus, not only does Singer merely produce a spreadsheet for data entry, but there is no interaction or enablement of interaction between the user, the server and the resulting spread-sheet in constructing a profile from the user’s answers to evaluation questions. In the Advisory Action, the Examiner asserted that Singer allowing brief period of offline interaction does not necessarily mean that the whole process takes place offline and pointed “also to interaction between the user, the server and the resulting spreadsheet in constructing a profile from the user's answers.” Applicant respectfully submits that Singer’s disclosure of editing/uploading spreadsheets and a central repository is not responsive to evaluation questions as recited in the present claims.

Therefore, Applicant respectfully submits that Singer et al. fails to support a *prima facie* case of anticipation, at least because Singer et al. fails to disclose “[a] system for allowing a user to perform an assessment for compliance certification...*wherein the evaluation questions ask for information used to construct profiles of at least one organization, each profile comprising substantive work-function related information of the at least one organization, at least one of the substantive work-function related information selected from the group consisting of: tests performed, specialties, instruments, personnel, and proficiency testing of the at least one organization, wherein the assessment questions ask for information used to determine if said at least one organization meets requirements for at least one compliance certification, and wherein subsets of said plurality of evaluation and assessment questions are combined to form a plurality of assessment courses; and... wherein said processor is further configured to construct at least one profile of the organization seeking said at least one compliance certification based on said responses to said subset of evaluation questions, said responses from the assessed user to said subset of evaluation questions controlling the display of the assessment questions and other question groups contained within the group that it controls, wherein only assessment questions relative to evaluation questions answered affirmatively, or as being applicable, by the assessed user are presented...*” (emphases added) as recited in independent claim 1.

Similarly, Singer et al. fails to support a *prima facie* case of anticipation with respect to at least the recited features of independent claim 11 of “[a] computer-implemented method for

allowing users to remotely perform assessments for compliance certification via a graphical user interface on a network access device...*wherein the evaluation questions ask for information used to construct profiles of at least one organization, each profile comprising substantive work-function related information of the at least one organization, at least one of the substantive work-function related information selected from the group consisting of: tests performed, specialties, instruments, personnel, and proficiency testing of the at least one organization, wherein the assessment questions ask for information used to determine if said at least one organization meets requirements for at least one compliance certification, and wherein subsets of said plurality of evaluation and assessment questions are combined to form a plurality of assessment courses... constructing at least one profile of the organization seeking said at least one compliance certification based on said responses to said subset of evaluation questions, said responses from the assessed user to said subset of evaluation questions controlling the display of the assessment questions and other question groups contained within the group that it controls, wherein only assessment questions relative to evaluation questions answered affirmatively, or as being applicable, by the assessed user are presented...*" (emphases added).

Accordingly, Singer et al. also fails to support a *prima facie* case of anticipation with respect to at least the recited features of independent claim 22 of "[a] computer program product comprising a computer usable medium having control logic stored therein for causing a computer to perform assessments for compliance certification, said control logic comprising: first computer readable program code means for causing the computer to store a plurality of evaluation questions and a plurality of assessment questions, *wherein the evaluation questions ask for information used to construct profiles of at least one organization, each profile comprising substantive work-function related information of the at least one organization, at least one of the substantive work-function related information selected from the group consisting of: tests performed, specialties, instruments, personnel, and proficiency testing of the at least one organization, wherein the assessment questions ask for information used to determine if said at least one organization meet requirements for at least one compliance certification, and wherein subsets of said plurality of evaluation and assessment questions are combined to form a plurality of assessment courses...*sixth computer

RCE and Response under 37 CFR §1.114, responsive to Notice of Panel Decision from Pre-Appeal Review

readable program code means for causing the computer to construct at least one profile of the organization seeking said at least one compliance certification based on said responses to said subset of evaluation questions, wherein said sixth computer readable program code means causes said responses from the assessed user to said subset of evaluation questions to control the display of the assessment questions and other question groups contained within the group that it controls, wherein only assessment questions relative to evaluation questions answered affirmatively, or as being applicable, by the assessed user are presented..." (emphases added).

Applicant respectfully submits that, at least because of the above reasons, independent claims 1, 11 and 22 and their respective dependent claims (including claims 8, 25 and 26) are patentably distinguished over Singer et al. and are novel, unobvious and consequently patentable over the cited prior art of record. It is therefore respectfully submitted that the rejections under 35 U.S.C. 102(b) should be withdrawn.

Claim Rejections under 35 U.S.C. §103(a)

The Examiner rejected claims 2-7, 12, 13, 19, 24 and 27 under 35 U.S.C. §103(a) as being unpatentable over Singer et al. in view of Bua; rejected claims 9, 10 and 18 under 35 U.S.C. §103(a) as being unpatentable over Fletcher et al.; and rejected claim 20 under 35 U.S.C. §103(a) as being unpatentable over Singer et al. and Allison.

Response

Claims 2-7, 12, 13, 19, 24 and 27 have been amended or depend upon amended claims and, as amended, the rejections thereto are respectfully traversed. Applicant respectfully traverses the rejections since all of the features of the presently claimed subject matter are not disclosed by the cited references.

In order to establish a *prima facie* case of obviousness, the Examiner must establish: (1) some suggestion or motivation to modify the references exists; (2) a reasonable expectation of success; and (3) the prior art references teach or suggest all of the claim limitations.

Applicant respectfully submits that Bua, Fletcher et al. and Allison fail to cure the

RCE and Response under 37 CFR §1.114, responsive to Notice of Panel Decision from Pre-Appeal Review

deficiencies of Singer et al. with respect to the claimed subject matter in accordance with Applicant's independent claims 1, 11 and 22 and further, do not suggest a teaching or motivation to reach such subject matter as claimed in the instant application, whether individually or in combination. It is at least for these reasons that the cited references (Singer et al., Bua, Fletcher et al., and Allison) fail.

Therefore, it is submitted that independent claims 1, 11 and 22 and all the claims depending therefrom are unobvious over the cited prior art of record, whether taken alone or in any combination.

It is therefore respectfully submitted that the rejections under 35 U.S.C. 103(a) should be withdrawn.

CONCLUSION

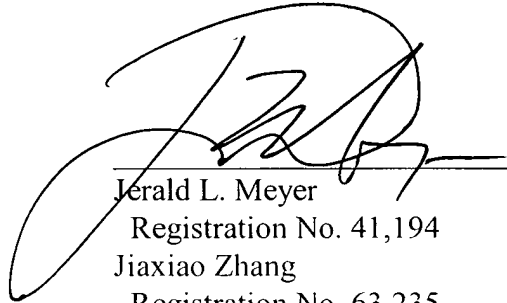
In light of the foregoing, Applicant submits that the application is in condition for allowance. If the Examiner believes the application is not in condition for allowance, Applicant respectfully requests that the Examiner call the undersigned.

Respectfully submitted,

THE NATH LAW GROUP

July 2, 2009
THE NATH LAW GROUP
112 South West Street

Alexandria, VA 22314-2891
Tel: 703-548-6284
Fax: 703-683-8396


Gerald L. Meyer
Registration No. 41,194
Jiaxiao Zhang
Registration No. 63,235
Customer No. 20529